

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:12-cv-77-RJC-DLH**

**PATRICK MIXON and KELLY
MIXON,**

Plaintiffs,

v.

**WELLS FARGO HOME MORTGAGE,
WELLS FARGO BANK, N.A., US
BANK NATIONAL ASSOCIATION, GS
MORTGAGE SECURITIES CORP.,
and JOHN DOES 1-50,**

Defendants.

ORDER

THIS MATTER comes before the Court on Plaintiffs' Motions for Temporary Restraining Order. (Doc. Nos. 2; 4).

Plaintiffs Patrick and Kelly Mixon ("Plaintiffs") filed a Motion for Temporary Restraining Order ("TRO") on February 8, 2012. (Doc. No. 2). In their Motion, Plaintiffs sought a TRO stopping and/or preventing the foreclosure of their home, located at 17029 Jetton Road, Cornelius, North Carolina 28031. (Id. at 1). Plaintiffs indicated that "the Defendant" issued a Notice of Trustee Sale and intended to sell their home at a public auction on February 2, 2012. (Id.). The Court notes that Plaintiffs' Motion for a TRO was filed six days after the scheduled sale they sought to prevent.

Plaintiff Patrick Mixon filed a corrected Motion for Temporary Restraining Order on February 17, 2012. (Doc. No. 4). In his Motion, Patrick Mixon seeks a TRO stopping and/or preventing the foreclosure of his home, located at 17029 Jetton Road, Cornelius, North Carolina 28031. (Id. at 1). Patrick Mixon indicates that "the Defendant" issued a Notice of Trustee Sale

and intends to sell his home at a public auction on March 2, 2012. (Id.).

Pursuant to Federal Rule of Civil Procedure 65:

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Based on a review of the docket, it appears that Plaintiff has not served the Complaint on Defendants. Further, the alleged sale of Plaintiffs' home is not scheduled until March 2, 2012. Based on these facts, the Court finds that there is sufficient time for Defendants to be heard in opposition prior to the scheduled auction. Patrick Mixon has not met his burden of showing that he will suffer immediate and irreparable injury, loss, or damage if the Court does not enter a TRO before hearing from Defendants.

IT IS, THEREFORE, ORDERED that Plaintiffs' Motions for Temporary Restraining Order, (Doc. Nos. 2; 4), are **DENIED**.

Signed: February 29, 2012



Robert J. Conrad, Jr.
Chief United States District Judge

